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8
9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 1H-2011-318

12 **MEGAN NICOLE MCDOWELL, R.C.P.**
13 **P.O. Box 521**
14 **Mentone, CA 92359**

A C C U S A T I O N

15 **Respiratory Care Practitioner**
License No. 28016

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Respiratory Care Board of California, Department of
22 Consumer Affairs.

23 2. On or about September 29, 2008, the Respiratory Care Board issued
24 Respiratory Care Practitioner License Number 28016 to Megan Nicole McDowell, R.C.P.
25 (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on October 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

"...

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

"...

"...

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

"...

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1 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
2 substantially related to the qualifications, functions, or duties of a respiratory care
3 practitioner.

4 "..."

5 7. Section 3750.5 of the Code states:

6 "In addition to any other grounds specified in this chapter, the board may deny,
7 suspend, place on probation, or revoke the license of any applicant or license holder
8 who has done any of the following:

9 "(a) Obtained, possessed, used, or administered to himself or herself in
10 violation of law, or furnished or administered to another, any controlled substances as
11 defined in Division 10 (commencing with Section 11000) of the Health and Safety
12 Code, or any dangerous drug as defined in Article 2 (commencing with section 4015)
13 of Chapter 9, except as directed by a licensed physician and surgeon, dentist,
14 podiatrist, or other authorized health care provider."

15 8. Section 3752 of the Code states:

16 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
17 made to a charge of any offense which substantially relates to the qualifications,
18 functions, or duties of a respiratory care practitioner is deemed to be a conviction
19 within the meaning of this article. The board shall order the license suspended or
20 revoked, or may decline to issue a license, when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal or when an order granting
22 probation is made suspending the imposition of sentence, irrespective of a subsequent
23 order under Section 1203.4 of the Penal Code allowing the person to withdraw his or
24 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
25 guilty, or dismissing the accusation, information, or indictment."

26 9. California Code of Regulations, title 16, section 1399.370, states:

27 "For the purposes of denial, suspension, or revocation of a license, a crime or
28 act shall be considered to be substantially related to the qualifications, functions or

1 duties of a respiratory care practitioner, if it evidences present or potential unfitness
2 of a licensee to perform the functions authorized by his or her license or in a manner
3 inconsistent with the public health, safety, or welfare. Such crimes or acts shall
4 include but not be limited to those involving the following:

5 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
6 abetting the violation of or conspiring to violate any provision or term of the Act.

7 "(b) Conviction of a crime involving fiscal dishonesty theft, or larceny.

8 "..."

9 **COST RECOVERY**

10 10. Section 3753.5, subdivision (a) of the Code states:

11 "In any order issued in resolution of a disciplinary proceeding before the board,
12 the board or the administrative law judge may direct any practitioner or applicant
13 found to have committed a violation or violations of law or any term and condition of
14 board probation to pay to the board a sum not to exceed the costs of the investigation
15 and prosecution of the case. A certified copy of the actual costs, or a good faith
16 estimate of costs where actual costs are not available, signed by the official custodian
17 of the record or his or her designated representative shall be prima facie evidence of
18 the actual costs of the investigation and prosecution of the case."

19 11. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
21 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative,
22 filing, and service fees."

23 12. Section 3753.1 of the Code states:

24 "(a) An administrative disciplinary decision imposing terms of probation may
25 include, among other things, a requirement that the licensee probationer pay the
26 monetary costs associated with monitoring the probation."

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Conviction of a Crime)

3 13. Respondent is subject to disciplinary action under section 3750, as defined by
4 3750, subdivisions (d) and (g), and 3752 of the Code and Title 16 of the California Code of
5 Regulations, section 1399.370, subdivisions (a) and (b), in that Respondent has been convicted of
6 a crime substantially related to the qualifications, functions or duties of a respiratory care
7 practitioner. The circumstances are as follows:

8 A. On or about May 26, 2011, in the Superior Court, County of San Bernardino, in
9 the case *People of the State of California v. Megan Nicole McDowell*, Case No. FSB1101555,
10 pursuant to a plea bargain, Respondent was convicted on her own guilty plea, of one count to the
11 amended charge of petty theft in violation of Penal Code 484.

12 As a consequence of the conviction, Respondent was granted 36 months of probation
13 with certain terms and conditions, including, but not limited to, violate no law, pay fines, and stay
14 away from Walmart.

15 B. The circumstances of the conviction are as follows: On or about March 19,
16 2011, Respondent was observed by a Wal-Mart Loss Prevention Agent conceal store
17 merchandise, place it in a gray purse, and leave the store without paying for the merchandise.
18 When Respondent was contacted by the Wal-Mart Loss Prevention Agent, she fled but she
19 dropped the purse with the stolen merchandise along with her own personal purse which
20 contained her California Identification Card.

21 C. On or about April 7, 2011, the District Attorney for the County of San
22 Bernardino, filed a felony criminal complaint charging Respondent with one count of Second
23 Degree Commercial Burglary in violation of Penal Code section 459, a felony.¹ On or about May
24 26, 2011, the complaint was amended by interlineation to add the petty theft charge [Count 2] to
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26 ¹ The District Attorney's criminal complaint was filed before Respondent's arrest. On
27 April 28, 2011, the Court issued a warrant for Respondent's arrest. On May 15, 2011,
28 Respondent was subsequently arrested and charged with violating Penal Code section 459
[burglary].

1 the complaint. Following respondent's admission to the petty theft charge, the District Attorney
2 dismissed the Penal Code section 459 charge.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Commission of any Fraudulent, Dishonest, or Corrupt Act)

5 14. Respondent is further subject to disciplinary action under section 3750, as
6 defined by 3750, subdivision (j), of the Code, and Title 16 of the California Code of Regulations,
7 section 1399.370, subdivision (b), in that Respondent was convicted of the crime of petty theft
8 which is a crime that involves fraudulent, dishonest, or corrupt acts, substantially related to the
9 qualifications, functions, or duties of a respiratory care practitioner as more particularly described
10 in paragraph 13 above, which is incorporated by reference as if fully set forth herein.

11 **THIRD CAUSE FOR DISCIPLINE**

12 (Possession of a Controlled Substance)

13 15. Respondent is further subject to disciplinary action under section 3750.5, as
14 defined by 3750.5, subdivision (a) of the Code, in that Respondent possessed a controlled
15 substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety
16 Code, or any dangerous drug as defined in Article 2 (commencing with section 4015) of Chapter
17 9 of this code." The circumstances are as follows:

18 A. On or about May 31, 2010, Respondent was observed by a Walmart Loss
19 Prevention Agent conceal video games and a video game controller in a purse and leave the store
20 without paying for these items. The Walmart Loss Prevention Agent released Respondent to the
21 Redlands Police Department. Respondent told Redlands Police Officer Greeley she stole the
22 items so she could pawn them for money because she had a \$60.00 per day heroin habit. Officer
23 Greeley searched Respondent's purse and found pieces of foil that had burn marks. Respondent
24 further told Officer Greeley she used the foil for heroin to smoke it. Upon further search of
25 Respondent's purse, Officer Greeley located 13 yellow oval shaped pills and 14 white round pills.
26 Officer Greeley contacted the Poison Control who identified the yellow pills as Norco and the

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1 white pills were identified as Percocet. Respondent was subsequently arrested for possession of
2 a narcotic-controlled substance in violation of Health and Safety Code section 11350,
3 subdivision (a).

4 **FOURTH CAUSE FOR DISCIPLINE**

5 (Violating Any Provision of the Act)

6 16. Respondent is further subject to disciplinary action under section 3750, as
7 defined by 3750, subdivision (g), of the Code and Title 16 of the California Code of Regulations
8 section 1399.370, subdivision (a), in that she violated a provision of this chapter, in that she was
9 convicted of a crime and committed an act, substantially related to the qualifications, functions, or
10 duties of a respiratory care practitioner, as more particularly described in paragraphs 13 through
11 15, above, which are incorporated herein by reference and realleged as if fully set forth herein.

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein
13 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 14 1. Revoking or suspending Respiratory Care Practitioner License Number 28016,
15 issued to Megan Nicole McDowell, R.C.P..
- 16 2. Ordering Megan Nicole McDowell, R.C.P. to pay the Respiratory Care Board
17 the costs of the investigation and enforcement of this case, and if placed on probation, the costs of
18 probation monitoring;
- 19 3. Taking such other and further action as deemed necessary and proper.
- 20

21 DATED: September 20, 2011

22 Original signed by Liane Freels for:
STEPHANIE NUNEZ
23 Executive Officer
Respiratory Care Board of California
24 Department of Consumer Affairs
State of California
25 *Complainant*

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